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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/820,931

MAILED

Filing Date: April 08, 2004

FEB 06 2008

Appellant(s): POND, GARY J.

GROUP 3700

Patrick J. Fleis
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 15, 2007 appealing from the Office action mailed May 16, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

Appellant's brief presents arguments relating to objection under 37 CFR 1.75 in Section I. This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP § 1002 and § 1201.

In Appellant's Section IV, 35 U.S.C. § 102(a) should read § 102(b).

Other sections of the appellant's statement of the grounds of rejection to be reviewed on appeal are correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief of claims 2-5 and 9 are correct, claim 1 is incorrect because it has included changes to the claim of formality after final rejection. A correct Appendix of the claims as it appeared at final rejection is attached.

(8) Evidence Relied Upon

6,164,968	FEINE	12-2000
6,086,369	SHARP et al.	7-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-5 and 9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claimed limitation in independent claims 1, 5, and 9 of an elongated body having “unitary, one-piece construction” is not described in the specification.

Claims 1-5 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are directed to an adaptor; however, the adaptor (piece) is claimed to be connected to both the handpiece and the tip, it is unclear whether the handpiece and tip are intended to be positively claimed.

Claims 1, 3-5, and 9 are rejected as understood, under 35 U.S.C. 102(b) as being anticipated by Feine. Feine discloses an adaptor for coupling a dental irrigation tip to an

ultrasonic dental scaler handpiece comprising an elongated body having unitary, one-piece construction, a distal end 38 and a proximal end 36; the proximal end shown securely matingly connected to the handpiece and distal end securely matingly connected to the tip, a through bore 42 located within the body, the through bore shown in fluid communication with the conduit 30 of the handpiece and through bore 64 of the tip (figure 4). The adaptor is plastic (column 4 line 8). The adaptor is autoclavable (column 5 line 20). The adaptor comprises means for connecting to dental handpiece 32 and means for connecting to irrigation tip 56.

Claim 2 is rejected as understood, under 35 U.S.C. 103(a) as being unpatentable over Feine in view of Sharp et al. (6,086,369). Feine discloses an adaptor that shows the limitations as described above; however, Feine does not show a means for restricting ultrasonic vibrations. Sharp et al. teach an ultrasonic dental scaler comprising a means for restricting ultrasonic vibrations 29. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the means of Sharp et al. in order to dampen flexural vibrations and make the motion of the tip less erratic in view of Sharp et al.

(10) Response to Argument

It is noted that pages 2-11 of the brief include the header "Serial No. 11/324,861" which is incorrect. This application number is 10/820,931.

The examiner will not respond to arguments to objection under 37 CFR 1.75, as it is a petitionable issue.

In response to rejection under 35 U.S.C. § 112 first paragraph, Appellant argues that the drawings (figures 4 and 7-11) provide adequate description for the phrase "unitary, one-piece

construction” of the elongated body. The examiner does not believe the drawings show sufficient detail to show such a construction of the elongated body part.

In response to rejection under 35 U.S.C. § 112 second paragraph, Appellant argues that the claims are directed only to the adaptor and are definitely recited as such. The examiner agrees that the preamble establishes the relationship of the adaptor, the handpiece and the tip by stating “[a]n adaptor for coupling a dental irrigation tip to an ultrasonic dental scaler handpiece,” and the body recites “an elongated body . . . having a distal end for connection to said irrigation tip and a proximal end for connection to said dental handpiece.” However, the body also includes the limitations “said proximal end securely matingly connected to said handpiece, said distal end securely matingly connected to said irrigation tip,” which positively claims the handpiece and irrigation tip. For examination purposes, the claims have been interpreted to have inferentially claimed the irrigation tip and handpiece as defined in the preamble.

In response to rejection under 35 U.S.C. § 102(b), Appellant argues that Feine does not disclose an adaptor of unitary, one-piece construction and that Feine shows “a multi-part adaptor, with the main sections being shown as reference numeral #12, #14, and #16.” It is believed figure 4 of Feine shows the adaptor having unitary, one-piece elongated body not including the o-rings. Two of the three parts in Feine’s figures that the Appellant is identifying as parts of the “adaptor” are in fact the tip and handpiece (as shown, Examiner is calling the inner piece near #14 , the elongated body).

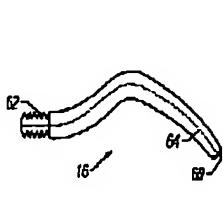


FIG. 6

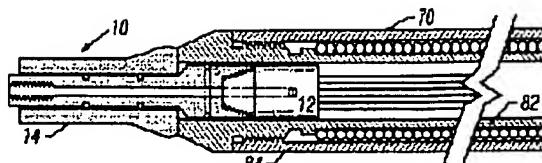


FIG. 8

Appellant's figure can also be identified as having similar three-parts #122, #120, and #112, reference numbers as defined on page 3 of brief (see below).

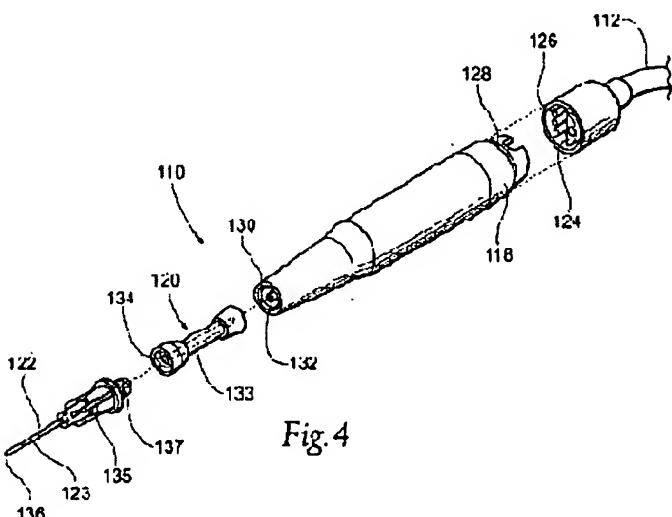


Fig. 4

In response to rejection under 35 U.S.C. § 103(a), Appellant argues that neither Feine nor Sharp discloses a dental adaptor being of unitary, one-piece construction. As stated above, it is believed figure 4 of Feine shows the adaptor having unitary, one-piece elongated body not including the o-rings. For that matter, Sharp shows a unitary, one-piece elongated body 18. However, it is noted that the elongated body part is claimed as unitary, one-piece construction, not the adaptor. The claim reads the adaptor further comprising means for restricting ultrasonic vibrations to said tip, which Sharp shows in column 5 line 32. The specification does not describe the elongated body or the restricting means of unitary, one-piece construction.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Melba Bumgarner/

Conferees:

Janet Baxter

Cris Rodriguez

Appendix

1. An adaptor for coupling a dental irrigation tip to an ultrasonic dental scaler handpiece, said dental scaler handpiece including ultrasonic vibration means, said dental handpiece being connectable to a power source for actuating said ultrasonic vibration means, said irrigation tip including a through bore, said dental handpiece including a conduit in fluid communication with a fluid source and in fluid communication with said adaptor, said adaptor comprising:
 - an elongated body having unitary, one-piece construction and having a distal end for connection to said irrigation tip and a proximal end for connection to said dental handpiece, said proximal end securely matingly connected said handpiece, said distal end securely matingly connected to said irrigation tip; and
 - a through bore located within said elongated body, said through bore in fluid communication with said conduit of said dental handpiece and said through bore of said irrigation tip.
2. The adaptor according to claim 1 further comprising means for restricting ultrasonic vibrations to said tip.
3. The adaptor according to claim 1 wherein said adaptor is plastic.
4. The adaptor according to claim 1 wherein said adaptor is autoclavable.
5. An adaptor for use with an ultrasonic dental handpiece and a dental irrigation tip, said adaptor converting said ultrasonic dental handpiece to a dental irrigation device, said adaptor comprising:

means for connecting said adaptor to said ultrasonic dental handpiece;

an elongated body having unitary, one-piece construction and having a through bore for fluid communication between said ultrasonic dental handpiece and said dental irrigation tip, said elongated body securely matingly connected to said handpiece and said dental irrigation tip; and

means for connecting said adaptor to said dental irrigation tip.

6 - 8 (cancelled)

9. A disposable adaptor for coupling a dental irrigation tip to an ultrasonic dental scaler handpiece, said dental scaler handpiece including ultrasonic vibration means, said dental handpiece being connectable to a power source for actuating said ultrasonic vibration means, said irrigation tip including a through bore, said dental handpiece including a conduit in fluid communication with a fluid source and in fluid communication with said adaptor, said adaptor comprising:

an elongated body having unitary, one-piece construction and having a distal end for connection to said irrigation tip and a proximal end for connection to said dental handpiece, said proximal end securely matingly connected to said handpiece, said distal end securely matingly connected to said irrigation tip; and

a through bore located within said elongated body, said through bore in fluid communication with said conduit of said dental handpiece and said through bore of said irrigation tip.